

REMARKS

Claims 1, 4, 6, 7-36, 43 and 44 are pending. Claims 2-3, 5 and 37-42 are cancelled, without prejudice to further prosecution of the subject matter of the cancelled claims.

Reconsideration and withdrawal of all rejections is respectfully requested in view of the above-provided amendments and the following remarks.

AMENDMENTS TO THE CLAIMS

The claims are amended in order to more particularly set forth that which Applicants consider to be their invention, without prejudice to the pre-amendment subject matter of the amended claims. For example, claim 1 is amended to include the elements of claim 3 (now cancelled) and to comprise SEQ ID NOs 2 or 4, and conservative amino acid substitutions thereof. A "conservative" amino acid substitution is defined by the specification, in the text bridging pages 25-26, as an amino acid substitution, "which acts as a functional equivalent, resulting in a silent alteration." Thus, the protein or polypeptide configuration remains equivalent even with a conservative substitution. All known examples of such conservative substitutions are described in that section of the specification.

The remaining claims are amended in conformity with claim 1 and/or are amended to address the various formal points raised by the Examiner.

New claim 43 requires that the hybridization of claim 8 is conducted under stringent conditions, wherein the melting temperature or Tm is 65° C. This is supported at page 25 of the specification. It is respectfully submitted that no new matter is added.

New claim 44 is copied from pre-amendment claim 36. New claim 45 is based upon previous claim 20. Claim 20 is amended to avoid having claim 25 (and other claims) depend from an antecedent multiple dependent claim.

RESTRICTION REQUIREMENT

As required by the Examiner on page 3 of the Office Action, Applicants confirm the election of Group I, consisting of claims 1-4 and 6-42, that was previously made by telephone by Applicants' attorney, on November 8, 2008.

THE CLAIM OBJECTIONS ARE OBLIVIATED

At page 4 of the Office Action, the Examiner has objected to claims 6-16, 18-21 and 25-36 under 37 CFR 1.75(c) for reciting multiple dependent claims that depend, in turn, on a previous multiple dependent claim.

Applicants appreciate the Examiner's attention to this point, and have amended the claims so that no multiply dependent claim depends from another multiply dependent claim. Thus, this ground of objection is obviated.

The Examiner has also objected to claims 1 and 3 for reciting "^{Ps}p45" without spelling out the abbreviation in the first usage. Claim 1 is amended as suggested by the Examiner to spell out the term, thus obviating this ground of objection.

For all of these reasons, reconsideration and withdrawal of these grounds of objection are respectfully requested.

**THE CLAIMS ARE ENABLED
UNDER 35 USC 112, FIRST PARAGRAPH**

At page 5, and continuing through the top of page 8 of the Office Action, claims 1-4 are rejected under 35 USC 112, first paragraph, as allegedly failing to comply with the written description requirement for reciting a genus of fragments and 70 percent homologs of SEQ ID NOs 2 and 4.

Applicants respectfully disagree. Claims 2 and 3 are cancelled, thus obviating the rejection as to those claims. Amended claims 1 and 4 no longer recite the fragments or homologs that formed the basis of this rejection. In addition, the conservative substitutions are, by definition, silent, not changing the protein or polypeptide structure, and are submitted to fairly fall within the scope of Applicants' invention. The conservative nature of the claimed substitutions are submitted to obviate the rejections based on the alleged unpredictability of random substitutions that has been put forward by the Examiner in the last paragraph of page 7 of the Office Action.

For all of these reasons, reconsideration and withdrawal of this ground of rejection is respectfully requested.

At page 8 of the Office Action, starting at the second full paragraph, claims 37-42 are rejected under 35 USC 112, first paragraph, as allegedly not enabled by the specification.

In the interest of expeditious prosecution, claims 37-42 are cancelled, without prejudice, thus obviating this ground of rejection.

For all of these reasons, reconsideration and withdrawal of this ground of rejection is respectfully requested.

At page 10 of the Office Action, starting at the third full paragraph, claims 17 and 22-24 are rejected under 35 USC 112, first paragraph, as allegedly not enabled by the specification, for lack of confirmation of an enabling deposit of the subject biological materials identified as LMG P-22044 and LMG P-22511, respectively.

Applicants appreciate the Examiner's attention to this point, and have requested a Deposit Declaration with the respective Deposit Receipts attached thereto, from the Applicants. The two described host cells were deposited with the Belgium Coordinated Collections of Microorganisms (BCCM - LMG) collection as deposits under the Budapest Treaty. LMG P-22044 was accepted on September 11, 2003. LMG P-22511 was accepted on May 27, 2004. A Declaration to this effect, incorporating the required statements, is expected from the Applicants within the next several days, and will be forwarded to the Examiner with a Supplement Response, as soon as available.

For all of these reasons, upon consideration of the Deposition Declaration when received by the Patent Office, reconsideration and withdrawal of this ground of rejection is respectfully requested.

THE CLAIMS ARE NOVEL UNDER 35 U.S.C. § 102

At page 13 of the Office Action, starting at the first full paragraph, claims 38-41 are rejected under 35 USC 102(b), as allegedly anticipated by Simon (Dissertation Abstracts International, 2002, Vol. 62-10B p4363 as evidenced by Morzunav et al., 1995, *Virus Res.* 38:175-192, and Argenton et al., 1996, *Diseases of Aquatic Organisms*, 24: 121-127.

In the interest of expeditious prosecution, claims 38-41 are cancelled, without prejudice, thus obviating this ground of rejection.

For all of these reasons, reconsideration and withdrawal of this ground of rejection is respectfully requested.

THE CLAIMS ARE NONOBVIOUS UNDER 35 U.S.C. § 103

At page 14 of the Office Action, starting at the second full paragraph, claims 38-41 are rejected under 35 USC 103, as allegedly obvious over Simon, Benjamin (as above) in view of Gudding et al., 1999 *Veterinary Immunology and Immunopathology*, 72: 203-212.

In the interest of expeditious prosecution, claims 38-41 are cancelled, without prejudice, thus obviating this ground of rejection.

For all of these reasons, reconsideration and withdrawal of this ground of rejection is respectfully requested.

CONCLUSION

The claims are urged to be in condition for allowance, and early action to that end is respectfully requested.

This Amendment is believed to be timely submitted with a Petition for One-Month Extension of Time. However, in the event that it is determined that any additional Extension of Time is required, the Commissioner is authorized to treat this paper as the required petition for extension of time, and to charge any required fee to Deposit Account No. 02-2275.

Eleven dependent claims are cancelled, and eight new dependent claims are added. Thus, no new fee is believed to be owed for entry of this amendment. Nevertheless, if any other fee is determined to be required for entry of this paper, that fee may also be charged to the above-mentioned Deposit Account.

Respectfully submitted,

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